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OFFICE OF PETITIONS

In re Application of Brooks et al. :
Application No. 10/711,809 :
Filing Date: October 6, 2004 :
Attorney Docket No. 22.1552 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.181, filed March 31, 2008, requesting the Office withdraw the holding of abandonment. The petition is filed in the alternative under 37 CFR 1.137(a) and 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

Facts:

The Office mailed a non-final Office action including a requirement for restriction/election on June 18, 2007.

A reply to the June 18, 2007 Office action was timely filed July 10, 2007.

The examiner determined the July 10, 2007 reply, although bona fide, was not fully responsive. As a result, the examiner mailed an Office action on September 12, 2007, requiring petitioner to file a proper response. The Office action set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later).

The Office did not receive a reply to the September 12, 2007.

A Notice of Abandonment was issued April 2, 2008.

Discussion:

The instant petition asserts the September 12, 2007 Office action was never received.

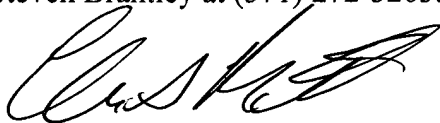
After a full review of the record, the Office has determined petitioner has provided sufficient evidence to demonstrate non-receipt of the September 12, 2007. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, petitioner's request to have the petition considered under 37 CFR 1.137(a) and 37 CFR 1.137(b) is dismissed as moot.

A fee of \$510 for the petition under 37 CFR 1.137(a) was charged to petitioner's deposit account on April 1, 2008. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee has been credited back to petitioner's deposit account.

Technology Center Art Unit 3641 will be informed of the instant decision and the examiner will consider the Supplemental Reply filed March 31, 2008, in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', is written over the printed name.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions